

AX 9904777

**Nez Perce****TRIBAL EXECUTIVE COMMITTEE**

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

June 21, 1999

Carol Browner, Administrator  
Environmental Protection Action  
West Rower of Waterside Mall, W1200  
401 M Street, S.W.  
Washington DC 20460

**Re: Request for EPA to Exercise Its Discretion to Regulate Dams as Point Sources Under the Clean Water Act to Address Dam-Induced Water Quality Impacts in the Northwest and in Indian Country**

Dear Ms. Browner:

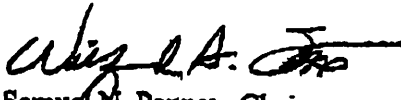
We are concerned that EPA's role in protecting the nation's water quality and its beneficial uses, including salmon, is being thwarted in the Northwest and in Indian Country with regard to dam-induced water quality impacts. We believe that this is a direct result of EPA's failure to exercise its discretion to regulate dams as point sources under the Clean Water Act.

EPA's failure to exercise its discretion under the Clean Water Act to regulate dams as point sources has substantially reduced EPA's ability to address water quality impacts related to dams. Two examples are illustrative. First, EPA's Regional Administrator for Region 10, Chuck Clarke, has recognized that the four dams on the Lower Snake River cause significant exceedences of water quality standards for temperature and dissolved gas and has directed the United States Army Corps of Engineers that it is "imperative that appropriate measures be implemented as soon as possible to address this situation." EPA and the Corps' inability to address the situation has, as you know, led a number of fishing and environmental organizations to file a lawsuit against the Corps of Engineers to enforce water quality standards. The degradation of water quality and beneficial uses, including salmon, resulting from these dams directly affects the Tribe, which has announced its intention of intervening in this case. Second, EPA has recognized that it retains authority to administer the Clean Water Act on the Nez Perce Reservation unless and until the Tribe assumes that authority. While EPA has recognized that dams on the reservation are causing water quality impacts, EPA is not actively employing all its statutory tools to address this situation.

As we approach the thirtieth anniversary of the Clean Water Act, dam-induced water quality impacts continue to threaten our nation's waters. While the Tribe will continue to explore all mechanisms to address this situation, we believe there is an opportunity for EPA to address this situation by exercising its discretion under the Clean Water Act to regulate dams as point sources. A decision by EPA to regulate dams as point sources would be consistent with federal court rulings such as *NWTF v. Gorsuch*. Such a decision would also assist in addressing the water quality problems that have been exacerbated by EPA's failure to regulate dams as point sources.

We appreciate your attention to this matter and look forward to hearing from you.

Sincerely yours,

  
6 Samuel N. Penney, Chairman